LIBRARY
REME COURT, U. S.

Office-Supreme Court, U.S.
FILED
SEP 18 1969
JOHN F. DAVIS, CLERK

IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, [redacted] 1969

No. 614

JOSEPH RICHARD WICK,
Petitioner,

vs.

UNITED STATES OF AMERICA,
Respondent.

PETITION FOR A WRIT OF CERTIORARI

To the United States Court of Appeals for the Seventh Circuit.

JEROME J. DUFF,
721 Olive Street,
St. Louis, Missouri 63101,
CHARLES M. SHAW,
Suite 311,
225 South Meramec,
Clayton, Missouri 63105,
Attorneys for Petitioner.

St. Louis Law Printing Co., Inc., 411-15 N. Eighth St., 63101 314-231-4477.

INDEX.

	Page
Opinions below	1
Jurisdiction	2
Questions presented	2
Constitutional Provisions and Statutes Involved	2
Statement	3
Reasons for granting the Writ	4
Conclusion	5
Appendix A. Opinion of Court of Appeals, dated August 19, 1969	A-1
Appendix B. Testimony Relative to Assignment of Error	A-5

CITATIONS.

Cases.

Chapman v. California, 386 U. S. 18	4
Griffin v. California, 380 U. S. 609	4
Harrington v. California, 395 U. S. 250	5
Miranda v. Arizona, 384 U. S. 436	2, 4

Constitutional Provisions.

Constitution of the United States, Fifth Amendment	2

Statutes and Rules.

Rule 37 (c) of the Federal Rules of Criminal Procedure	2
18 U. S. C., Section 472	2, 3
28 U. S. C., Section 1254 (1)	2

IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1968.

No. .....

JOSEPH RICHARD WICK,
Petitioner,

vs.

UNITED STATES OF AMERICA,
Respondent.

PETITION FOR A WRIT OF CERTIORARI

To the United States Court of Appeals for the Seventh Circuit.

Joseph Richard Wick, your Petitioner, respectfully prays that a Writ of Certiorari be issued to review the judgment of the United States Court of Appeals for the Seventh Circuit entered in the above entitled cause on August 19, 1969.

OPINIONS BELOW.

This cause was decided by a panel of the United States Court of Appeals on August 19, 1969, in an opinion set out in Appendix A hereof.

JURISDICTION.

The judgment of the United States Court of Appeals was entered on August 19, 1969, and jurisdiction of this Court is invoked under 28 U. S. C., Section 1254 (1), and Rule 37 (c) of the Federal Rules of Criminal Procedure.

QUESTIONS PRESENTED.

Whether, under the Fifth Amendment of the Constitution of the United States, as interpreted by Miranda v. Arizona, 384 U. S. 436, 16 L. ed. 2d 694, 86 S. Ct. 1602, the prosecution may use at trial, the fact that a Defendant stood mute or claimed his privilege not to answer in the face of an accusation.

CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED.

Fifth Amendment to Constitution of the United States:

> No person . . . shall be compelled in any criminal case to be a witness against himself.

Statutes of the United States:

> 18 U. S. C., Section 472 uttering counterfeit obligations or securities.

Whoever, with intent to defraud, passes, utters, publishes, or sells, or attempts to pass, utter, publish, or sell, or with like intent . . . keeps in possession or conceals any falsely made, forged, counterfeited, or altered obligation or other security of the United States, shall be fined not more than $5,000.00 or imprisoned not more than fifteen years, or both.

STATEMENT.

Petitioner was charged in a three count indictment for violation of Title 18, Section 472, U. S. C. as follows:

In Count I thereof he was charged with passing a counterfeit bill on August 11, 1966, in a certain men's store in Edwardsville, Illinois. In Count II thereof, Petitioner was charged with passing a counterfeit bill on the 11th day of August, 1966, in another transaction. In Count III thereof, Petitioner was charged with having in his possession 28 such counterfeit bills on August 11, 1966.

Petitioner was convicted of the two counts of passing counterfeit bills but was acquitted by the jury of being in possession of 28 falsely made and counterfeited obligations. He was not convicted on all three counts as is set out in the opinion of the Court of Appeals herein.

The facts material to the consideration of the question presented is that during the trial in the cause and during the direct examination of a United States Secret Service Agent, the government's attorney, over the objection by the Defendant, was allowed to ask the agent, "Do you recall any specific questions that were asked?" Answer: "Yes". Question: "Would you tell the Court and jury what those questions were and the answers, if you recall?" Answer: "He was asked where he obtained the counterfeit notes, and he refused to give an answer to that question."

The testimony relative to the assignment of error claimed, appear at pages 153, 154, and 155 of the Transcript and is set out in full in Appendix B attached hereto together with argument by the government relative thereto.

On August 19, 1969, the Court of Appeals for the Seventh Circuit held that it was error to introduce Defend-

ant's reliance on his Fifth Amendment privilege at the interrogation in the trial but found, nevertheless, that the error was harmless.

REASONS FOR GRANTING THE WRIT.

The Court of Appeals has rendered a decision which is in conflict with the holding of this Court in Miranda v. Arizona, supra and Griffin v. California, 380 U. S. 609. The question of whether or not Defendant's exercise of the Fifth Amendment right to refuse to answer a question, can be used against him and the question of whether or not that refusal may be commented upon by the government's attorney in his closing argument, are important questions of federal law which should be settled by this Court. This is even more so in light of the holding of the Circuit Court of Appeals for the Seventh Circuit wherein it admitted that the ruling was in error and then went on to say that the error was harmless. This appears to be a departure from the case of Chapman v. State of California, 386 U. S. 18, 17 L. ed. 2nd 705, 87 S. Ct. 824, which held, inter alia, that before an error involving the denial of the federal constitutional right to be held harmless in a state criminal case, the reviewing court must be satisfied beyond a reasonable doubt that the error did not contribute to the Defendant's conviction. The Circuit Court of Appeals for the Seventh Circuit takes the view that the other evidence was so overwhelming that it could not have contributed to the jury's verdict. Obviously, there was no overwhelming evidence because the jury acquitted Defendant on the count involving possession of the counterfeit bills. The Circuit Court of Appeals for the Seventh Circuit made certain other errors in its recitation of the facts, one being that the counterfeit bills were not found in the glove compartment of the automobile as it was being towed by a towing company and Defendant did not go into a certain card shop with one Joseph Foley who

was with him on the date in question. A reading of the facts in the case would indicate that the Circuit Court of Appeals of the Seventh Circuit has not fully acquainted itself with the facts of this cause and in so failing, has departed from accepted and usual course of judicial proceedings to that extent.

Harrington v. California (23 L. Ed. 2nd 284), 395 U. S. 250, which the court relied on involved a confession of a Co-Defendant and whether or not it can be used and if so, was the use prejudicial error. Further, the evidence in this case is not the overwhelming evidence referred to in Harrington v. California and involves a fundamental question, not of whether or not a confession of a Co-Defendant may be used, but whether or not a Defendant's silence can be used against him.

CONCLUSION.

Therefore, it is respectfully submitted that this petition for certiorari should be sustained.

Respectfully submitted,

JEROME J. DUFF,
721 Olive Street,
St. Louis, Missouri 63101,

CHARLES M. SHAW,
Suite 311,
225 South Meramec,
Clayton, Missouri 63105,
Attorneys for Petitioner.

APPENDIX

APPENDIX A.

Opinion.

In the
United States Court of Appeals
for the Seventh Circuit.

September Term, 1968—April Session, 1969.

No. 17301

United States of America,
Plaintiff-Appellee,

v.

Joseph Richard Wick,
Defendant-Appellant.

Appeal from the United States District Court for the Southern District of Illinois, Southern Division.

August 19, 1969.

Before Duffy, Senior Circuit Judge, Kerner, Circuit Judge, and Beamer, District Judge.[1]

Kerner, Circuit Judge. Defendant, Joseph Richard Wick, was indicted on three counts for violation of 18 U. S. C., § 472, uttering and possessing counterfeit obligations of the United States with intent to defraud. A jury found defendant guilty on all counts and defendant appeals.

---

[1] Judge George N. Beamer is sitting by designation from the United States District Court for the Northern District of Indiana.

On August 11, 1966, defendant picked up Joseph Foley in a 1960 Dodge and drove to Edwardsville, Illinois. In Edwardsville, defendant and Foley went to a card shop. They bought some cards with a counterfeit ten dollar bill. Defendant then went to a clothing store and gave the owner a ten dollar bill for the purchase of a $1.00 pair of socks. The owner of the clothing store refused to accept the bill because he thought it was counterfeit. The owner of the store followed defendant to a 1960 Dodge where he saw defendant put a package in the car. Defendant was arrested at the car with Foley and a woman, Norine Greenberg. In towing the car to the police station an employee for the towing company found a box of counterfeit ten dollar bills in the glove compartment.

The woman at the card store and the owner of the clothing store identified the defendant as the one who gave them counterfeit ten dollar bills. At the police station defendant admitted that he knew Foley but denied knowing Norine Greenberg. Norine Greenberg later testified that she was defendant's sister.

Defendant attacks the testimony of Agent Allen who interviewed him at the police station because of the agent's failure to give defendant the proper warnings under *Miranda v. Arizona,* 384 U. S. 436 (1966). The agent testified:

> I advised him of the fact that he did not have to tell me anything; that anything he told me could possibly be used in Court against him; I advised him of the fact that he had a right to an attorney; I advised him of the fact that if he couldn't afford an attorney, the Government had provisions whereby they would appoint one for him; I advised him that if he chose to answer my questions, he could stop answering questions at any time. And I think that's complete, so far as the advice of the rights are concerned, I think I remember it all.

The Court in *Miranda* said that the defendant should be told "that anything said can and will be used against . . ." him. 384 U. S. at 469. We do not think that the defendant was prejudiced by the use of the words "could possibly be used. . . ." Since during the interrogation defendant refused to answer any questions regarding the counterfeit money, it is evident he understood the warnings.

During the trial Agent Colquhoun testified that at the interrogation he heard Agent Allen ask the defendant where he obtained the counterfeit notes and defendant refused to answer the question. This conversation also was briefly mentioned in the closing argument of the government attorney. Defendant claims that these statements violated his fifth amendment privilege against self-incrimination and that he was prejudiced. In *Miranda v. Arizona,* 384 U. S. 436, 468 n. 37 (1966), the Court extended *Griffin v. California,* 380 U. S. 609 (1965), and held that a defendant's refusal to answer questions at an interrogation could not be used at trial. We agree with defendant that it was error to introduce defendant's reliance on his fifth amendment privilege at the interrogation in the trial. However, we find that the error was harmless. The Court in *Chapman v. California,* 386 U. S. 18 (1967), held that for error to be harmless it must be "harmless beyond a reasonable doubt. . . ." 386 U. S. at 24. In Chapman the state's attorney commented extensively upon the defendants' refusal to testify and interwove their refusal into his entire argument to the jury. Here, the two statements, one by the witness and one by the government attorney, amidst the overwhelming evidence against the defendant including two positive identifications, could not have contributed to the jury's verdict, and we do not think that he was prejudiced. *Cf. Harrington v. California,* 395 U. S. 250 (June 2, 1969).

Defendant also alleges that it was prejudicial error to give the following instruction over his objection:

> A defendant has the absolute right not to testify, and the jury must not draw a presumption of guilt or any inference against the defendant because he did not testify.

In *Bruno v. United States,* 308 U. S. 287 (1939), the Court held that it was error to refuse defendant's request for the instruction. Courts have also held that it is not error for the district judge to give the instruction *sua sponte. United States v. Garguilo,* 310 F. 2d 249 (2d Cir. 1962); *Hanks v. United States,* 388 F. 2d 171 (10th Cir. 1968). There is no evidence that such an instruction has a prejudicial effect but rather it is thought to be helpful. *United States v. Garguilo,* 310 F. 2d at 252. Here, the instruction may have helped to cure any error created by the testimony of the agent and the comment of the government attorney. *United States v. Agueci,* 310 F. 2d 817, 831 (2d Cir. 1962). We do not think it was error to give the instruction in the face of defendant's objection. *United States v. Schwartz,* 398 F. 2d 464, 469-70 (7th Cir. 1968).

For the foregoing reasons, the judgment of the district court is affirmed.

Affirmed.

A true Copy:

Teste:

.....

Clerk of the United States Court of Appeals for the Seventh Circuit.

APPENDIX B.

The testimony relative to the assignment of error appears at pages 153, 154, and 155 of the transcript is as follows:

[153] The Court: Now, when you say the two individuals——

The Witness: Mr. Foley and Mr. Wick.

Mr. Runge: Q. All right.

And were any questions asked of Mr. Wick at that time? A. Yes, they were, he was asked where he got these particular counterfeit notes, he was told that they were——

Q. Now, just—just a minute.

Mr. Shaw: Let me hear——

Mr. Runge: May we approach the bench, Your Honor?

Mr. Shaw: Well now, Your Honor, he's asked a question, now he's trying to cut him off from answering, I think that Runge ought to testify, Judge, then he'd know exactly——

The Court: Well now, there'll be no comment, if you've got anything you want to tell the Court, come up and tell the Court.

(Discussion off the record, at the bench, and outside the hearing of the jury.)

Mr. Runge: Would you read the question to the witness, please?

[154] (Whereupon the last question was read back.)

The Witness: Yes, they were, we asked Mr. Wick—we told——

Mr. Shaw: Just a second.

The Court: He's answering the question.

Mr. Shaw: As not responsive——

The Court: He answered the question, now ask another question.

Mr. Runge: Q. Do you remember, were any questions

asked and any answers given concerning anyone who might have been with him, for example?

Mr. Shaw: Now, just a second. Your Honor, again—and this isn't to be fictitious, if Mr. Runge wants to testify, he should, this is not a proper question, it is leading and suggestive, it is—it is highly prejudicial to the Defendant, and I'm going to ask that the jury be discharged and a mistrial declared, just on the basis of that question that was put to this witness.

The Court: Objection will be overruled.

Mr. Shaw: I'm going to object to it as leading and suggestive, Your Honor, and putting words in the witness's mouth.

The Court: Well, the question hasn't been answered. [155] Now, ask another question.

Mr. Runge: Q. Mr. Colquhoun, you've testified that there was questioning going on at that time? A. Yes.

Q. All right.

Do you recall any specific questions that were asked? A. Yes.

Q. Would you tell the Court and jury what those questions were and the answers, if you recall? A. He was asked where he obtained the counterfeit notes, and he refused to give an answer to that question.

Mr. Shaw: All right.

Now, if Your Honor please, I'm going to ask that the jury be discharged and a mistrial be declared.

The Court: Objection overruled. Proceed, gentlemen.

The Witness: He was also asked if he knew the other individual, a Mr. Foley, who was in the room, and he said he had picked up Mr. Foley on the Missouri side of the —hitchhiking on the Missouri side of the Veterans Bridge, which is just—on the Illinois side [sic] of the Veterans Bridge, just in East St. Louis, Illinois, he was asked if he knew the—if he knew Margaret Greenberg, who had been arrested at the same time, and he * * *

* * * * * * *

The testimony relevant to the argument which appears at pages 221 and 222 of the transcript is as follows:

* * * * * * *

[221] them had a $5.00 bill and four singles in it, another had a $5.00 and one single in it, and another had a $5.00 bill or [sic] four singles in it, and another had the $5.00 bill and four singles in it, and one of the groupings had a $5.00 bill and five singles in it. That does not include the $9.00 that Mr. Renken got back when he got his socks back and his money. So, without Mr. Renken's money it added up to $43.00 in fives and singles, with Mr. Renken's $9.00, it adds up to $52.00. But, at the time that this Defendant gave Mr. Renken a counterfeit $10.00 bill, he had $43.00 in his pocket of lower and smaller denominations.

And prior to that he had given another $10.00 bill to Miss Nicol for some greeting cards at the Melody Bar.

And Mr. Renken told us that what he bought at his store was a pair of socks for a dollar, and he gave him the dollar [sic] and the tax, then he gave him $9.00 change.

Then Mr. Colquhoun took the stand, told us about being at the Police Station, and that he came in, actually, when Mr. Allen talked to Mr. Wick and they—he overheard—Mr. Allen asked the questions and Mr. Wick give some answers, and specifically that when he [222] asked him about any counterfeit, Mr. Wick said he didn't want to answer.

Mr. Shaw: If the Court please, I'm going to ask the jury be discharged and a mistrial declared for that comment of the State's—of the Government attorney.

The Court: Overruled.

Mr. Runge: And at that point he followed Mr. Allen out of the Police Station, Mr. Allen got in the car, drove it * * *.

In the Supreme Court of the United States

OCTOBER TERM, 1969

No. 614

JOSEPH RICHARD WICK, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

OPINION BELOW

The opinion of the court of appeals (Pet. App. A 1–4) is not yet reported.

JURISDICTION

The judgment of the court of appeals was entered on August 19, 1969. The petition for a writ of certiorari was filed on September 18, 1969. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

QUESTION PRESENTED

Whether brief statements by a government witness at trial and by the prosecutor in summation, to the effect that during police custodial interrogation peti-

tioner refused to state where he had obtained counterfeit notes, constituted harmless error.

STATEMENT

In a jury trial in the United States District Court for the Southern District of Illinois petitioner was convicted on Counts I and II of passing two counterfeit $10 bills in separate transactions in violation of 18 U.S.C. 472, and was acquitted on Count III charging possession of 28 counterfeit $10 bills (Tr. 264).[1] On October 17, 1968, petitioner was given concurrent sentences of imprisonment for four years on Counts I and II. On appeal the conviction was affirmed (Pet. App. A 1–4).

1. The evidence shows that on August 11, 1966, petitioner drove Joseph Foley and Norine Greenberg in his 1961 Dodge from St. Louis, Missouri to Edwardsville, Illinois (Tr. 163, 165–167, 181–182). In Edwardsville petitioner and Foley went to a card shop, where each man purchased a card with a counterfeit $10 bill (Govt. Ex. 1; Tr. 27, 31, 38–40, 150, 187–188). About ten minutes later the employee at the card shop noticed that the two bills had the same serial number and notified the police (Tr. 36–38).

That same day, petitioner went to a nearby clothing store where he gave the owner a counterfeit $10 bill (Govt. Ex. 2) for the purchase of a $1.00 pair of socks. The owner, believing the bill to be counterfeit, asked

[1] We are filing with the Clerk of this Court a certified copy of the transcript of the trial testimony, to which we shall refer as "Tr." We are also filing copies of the indictment and the commitment.

an employee to call the police. He then followed petitioner to his Dodge automobile as the latter was placing his purchase in the car. The store owner advised petitioner that he could not accept the bill because it was counterfeit. Petitioner returned to the store. A police officer then arrived and the owner gave him the counterfeit bill. Petitioner was placed under arrest (Tr. 5–10, 23, 50–51, 150–151, 187–188).

Petitioner and Foley, who meanwhile had also been arrested, were placed in a police car (Tr. 54–58). After the police drove around and saw Norine Greenberg sit down in the Dodge, they took her to the police station with petitioner and Foley to await arrival of federal agents (Tr. 63–64). That same day at the police station the employee of the card shop identified petitioner and Foley as the men who had passed two counterfeit bills to her (Tr. 29–30, 39).

2. On direct examination of Secret Service Agent Colquhoun, testifying as to the questioning of petitioner at the police station, after his warnings as to silence and to counsel (see Pet. App. A 2), the following colloquy occurred (Tr. 155):

> Q. Would you tell the Court and jury what those questions were and the answers, if you recall?
>
> A. He was asked where he obtained the counterfeit notes, and he refused to give an answer to that question.
>
> Mr. SHAW [petitioner's counsel]. All right. Now, if Your Honor please, I'm going to ask that the jury be discharged and a mistrial be declared.

The COURT. Objection overruled. Proceed, gentlemen.

Shortly thereafter, *on cross-examination by defense counsel of this same witness*, the following occurred (Tr. 161–162):

Q. * * * did you ask the Defendant, Joseph Wick, if Exhibit 2, which I now hand you—did you ask him if he knew whether or not that was counterfeit?

A. I did.

Q. What did he say?

A. He wouldn't answer.

* * * * *

Q. Did you—did he say that he knew this was counterfeit?

A. He said he wouldn't answer that question.

Mr. SHAW [petitioner's counsel]. Again, I'm going to ask Your Honor, on the basis of his direct examination, that this case—that a mistrial be declared and the jury discharged.

The COURT. Overruled.[2]

---

[2] When agent Allen questioned petitioner at the police station petitioner did state that the Dodge convertible was his, and that he did not know the woman, Mrs. Greenberg (Tr. 109–110, 114–117). Mrs. Greenberg later testified that she was petitioner's sister (Tr. 181).

On the day following the questioning of petitioner at the police station agent Colquhoun was called to the garage where petitioner's Dodge had been driven. The agent took from the Dodge a box containing 25 counterfeit $10 bills (Govt. Exhibits 4, 5) which a garage employee had found in the glove compartment (Tr. 140–145, 158–161, 187–188).

The following transpired during the prosecutor's closing argument to the jury (Tr. 221–222):

> Then Mr. Colquhoun took the stand, told us about being at the Police Station, and that he came in, actually, when Mr. Allen talked to Mr. Wick [petitioner] and they—he overheard—Mr. Allen asked the questions and Mr. Wick give some answers, and specifically that when he asked him about any counterfeit, Mr. Wick said he didn't want to answer.

In his closing instructions, the trial judge pointed out *inter alia* that "Statements and arguments of counsel are not evidence" (Tr. 254).

ARGUMENT

As the court of appeals recognized it was error for the government to adduce evidence and make comment in closing argument that, during questioning at police headquarters following a warning as to his rights, petitioner refused to answer questions concerning the counterfeit bills. See *Miranda* v. *Arizona*, 384 U.S. 436, 468, n. 37; *Griffin* v. *California*, 380 U.S. 609. Nevertheless, we submit that the court below correctly ruled that this error was harmless in the circumstances of this case.

The evidence as to petitioner's guilt, summarized in the Statement, was so overwhelming as to support the conclusion of the court below that the brief comments concerning petitioner's silence constituted harmless error beyond a reasonable doubt. See *Harrington* v. *California*, 395 U.S. 250. *Chapman* v. *California*, 386 U.S. 18, where the Court found comment upon defendants' failure to testify prejudicial error,

is not to the contrary. In *Chapman* both the prosecutor and the judge commented extensively on defendants' refusal to testify. The broad extent of the comment in *Chapman* is shown by this Court's observation that "the state prosecutor's argument and trial judge's instruction to the jury continuously and repeatedly impressed the jury that from the failure of petitioners to testify, to all intents and purposes, the inferences from the facts in evidence had to be drawn in favor of the State—in short, that by their silence petitioners had served as irrefutable witnesses against themselves" (386 U.S. at 25). The situation in this case was significantly different. The reference by the agent witness to petitioner's refusal to answer a question about counterfeit money was a brief and isolated exchange. After the witness made the statement, government counsel did not pursue that line of questioning. Indeed, it was on cross-examination that petitioner's counsel, in asking several questions of the witness pertaining to petitioner's refusal to answer the question, emphasized his client's reliance upon his Fifth Amendment privilege (Tr. 161–162). The prosecutor's isolated comment in summation (Tr. 221–222) was also brief.

Furthermore, the jury's acquittal of petitioner on Count III strongly suggests that the jury predicated its verdict on the evidence in the case, and not on any incidental references to petitioner's silence. In fact, in his closing instructions the trial court specifically admonished the jury that "A defendant has the absolute right not to testify, and the jury must not draw a presumption of guilt or any inference against the

Defendant because he did not testify" (Tr. 255). As the court of appeals pointed out (Pet. App. A 4), the jury could reasonably infer that this instruction referred not only to the fact that petitioner had not testified at his trial, but also to his refusal to answer a question about the counterfeit bills during his interrogation at police headquarters.[3]

CONCLUSION

For the reasons stated, it is respectfully submitted that the petition for a writ of certiorari should be denied.

ERWIN N. GRISWOLD,
Solicitor General.

WILL WILSON,
Assistant Attorney General.

JEROME M. FEIT,
ROBERT G. MAYSACK,
Attorneys.

OCTOBER 1969.

---

[3] Even though defense counsel objected to this instruction at trial (Tr. 210–211), the court did not err in giving it *sua sponte*, since it was helpful to petitioner rather than prejudicial. *United States* v. *Agueci*, 310 F. 2d 817, 830–831 (C.A. 2), certiorari denied, 372 U.S. 959; *United States* v. *Garguilo*, 310 F. 2d 249, 252 (C.A. 2); *United States* v. *Di Carlo*, 64 F. 2d 15, 17–18 (C.A. 2); *United States* v. *De Vasto*, 52 F. 2d 26, 30 (C.A. 2), certiorari denied, 284 U.S. 678; *United States* v. *Schwartz*, 398 F. 2d 464, 469–470 (C.A. 7), certiorari denied *sub nom. Pyne* v. *United States*, 393 U.S. 1062; *Hanks* v. *United States*, 388 F. 2d 171, 175 (C.A. 10), certiorari denied, 393 U.S. 863.

U.S. GOVERNMENT PRINTING OFFICE: 1969